

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-09  
(August 15, 1996)

**Propriety of Judge Appearing in a Television  
Commercial to Endorse a Ballot Proposition**

**Issue**

Is it appropriate for a judge to appear in a television advertisement endorsing a ballot proposition the judge was involved in drafting.

**Answer:** No.

**Facts**

A judge participated in the drafting of a proposition that is likely to appear on an upcoming ballot. The proposition generally permits doctors to prescribe drugs of all kinds for medical reasons and requires drug users involved in simple possession or use of drugs to undergo mandatory drug rehabilitation rather than incarceration. The proposition's supporters have suggested that the judge appear in a television advertisement where he would be identified as a judge speaking in favor of the proposition.

**Discussion**

Canon 4A(1) of the Code of Judicial Conduct permits a judge to participate in a wide variety of extra-judicial activities as long as they do not "cast reasonable doubt on the judge's capacity to act impartially." Judges are, in fact, encouraged to speak and write about the law, the legal system, and the administration of justice. As the commentary to Canon 4B points out, a judge is in a unique position to contribute to the improvement of the law by recommending revisions of "substantive and procedural law and improvement of criminal and juvenile justice." However, the code does not permit a judge to act as a spokesperson and advocate for others.

The question is not whether judges can speak out on this kind of issue: they can and do. The real question is can they participate actively in a campaign to promote such a proposition, and, if so, how far can they go in endorsing it.

Canon 5A(5) states, "Except as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice." Under this standard, judges can publicly discuss the effects of proposed changes in the law, the legal system and the administration of justice and participate in debates about proposed ballot propositions affecting such matters. They may also participate in the drafting of proposed legislation. Texas, Opinion 76. But judges should avoid becoming spokespersons for political or public interest groups. Under Canon 5A(1)(b)

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“[a] judge . . . shall not . . . make speeches for a political organization.” As the commentary to this canon points out:

A judge is entitled to entertain his or her personal views on political questions. The judge is not required to surrender his or her rights or opinions as a citizen, *but should avoid political activity which may give rise to a suspicion of political bias or impropriety*. The term political activity should not be construed so narrowly as to prevent private comment. (Emphasis added.)

Canon 2B also prohibits a judge from lending the prestige of his or her judicial office to advance the private interests of the judge or others. In this instance, supporters of a ballot proposition may be seeking to advance their private interests. If so, a judge may not be able to participate in the supporters’ efforts without violating Canon 2B. (“[A] judge should not make speeches under circumstances which would give the appearance that he or she is giving support to a particular candidate, a political party or a particular political issue.”) *See* Opinion 76-01, issue 7.

We believe that it is inappropriate for a judge to appear in a television commercial endorsing a proposition that will appear on the ballot in an upcoming election. To permit otherwise would encourage judges to lend the prestige of their office to advance the private or political interests of groups or organizations outside the judiciary, a practice that could cause judicial impartiality to be called into question. We add, however, that a judge remains free to write and speak in neutral forums regarding this or any other measure to improve the law, the legal system, or the administration of justice. *See* Opinion 96-08.

### Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B, 5A(1)(b) and 5A(5) (1993).

### Other References

Arizona Judicial Ethics Advisory Committee, Opinions [76-01](#) (Jan. 6, 1976); [96-08](#) (Aug. 15, 1996).

Texas Committee on Judicial Ethics, Opinion 76 (1984).